

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338 E) for Authority to, Among Other Things, Increase its Authorized Revenues for Electric Service in 2003, and to Reflect that Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**OPINION GRANTING MANFRED F. GILDNER
 INTERVENOR COMPENSATION FOR HIS
 SUBSTANTIAL CONTRIBUTION TO
 DECISION 05-03-022**

Pursuant to § 1801 *et seq.* of the Pub. Util. Code and Rule 76.71 *et seq.* of the Commission's Rules of Practice and Procedure, Manfred F. Gildner (Gildner) is awarded \$6,725 in compensation for his substantial contribution to Decision (D.) 05-03-022, issued in Phase 2 of the test year 2003 general rate case (GRC) of Southern California Edison Company (Edison). This represents a decrease of \$102,070 from the amount requested.

I. Procedural Background and Summary

A. Procedural Issues

This is a lengthy proceeding involving several phases. The first prehearing conference was held on June 13, 2002. Gildner filed a motion to

intervene in this proceeding on July 26, 2004, and, pursuant to § 1804(a), filed an Notice of Intent (NOI) on September 24, 2004. The NOI adequately described the anticipated services and expenditures pursuant to § 1804(a)(2), and also the anticipated benefits to ratepayers. On October 18, 2004, Administrative Law Judge (ALJ) Barnett found that Gildner was a “customer” pursuant to § 1802(b), that the NOI was considered as timely filed, and that Gildner was eligible to claim an award of compensation. The ruling noted Gildner would file information regarding financial status at a later date.

Pursuant to § 1804 (c), Gildner filed a request for compensation on April 19, 2005, with the required 60 days of D.05-03-022 being issued. On April 21, 2005, Gildner filed under seal his personal financial information. Upon review of this information, we find that Gildner meets the requirement for financial hardship pursuant to § 1804(a)(2)(b).

In view of the above, we find that Gildner meets all of the procedural requirements in order to request an award for compensation.

B. Summary of Proceeding and Gildner’s Participation

In this proceeding Edison submitted testimony with various proposals for marginal cost calculation, revenue allocation and rate design in October 2002, and substantially updated its testimony in March 2003. The Office of Ratepayer Advocates (ORA), a protestant, submitted testimony on July 1, 2003. The Utility Reform Network (TURN) submitted testimony and rebuttal testimonies of two expert witnesses. Extensive settlement negotiations occupied parties in 2003 and 2004. Settlement negotiations paused in order to await a Phase 1 decision, due to the impact of potential changes in the revenue requirement on rates. All issues related to both the revenue requirement and rate design were resolved in a settlement filed on November 10, 2004.

Gildner participated in one area of Phase 2. He did not submit any testimony concerning marginal cost methods, allocation, or rate design. His interest was in one phase of rate design, discussed below.

II. Gildner's Substantial Contributions

A. Standard of Evaluation for Substantial Contribution

Section 1802(h) of the Pub. Util. Code defines “substantial contribution” as follows:

“‘Substantial contribution’ means that, in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

The Commission has interpreted the § 1802 definition, in conjunction with § 1801.3, so as to effectuate the Legislature’s intent to encourage effective and efficient intervenor participation.

While we have held that mere “participation in settlement negotiations” is not sufficient to guarantee productive participation, we have recognized that active participation in settlements does justify compensation.

Gildner has described his substantial contribution as follows:

My participation in this proceeding included attendance at Public Participation Hearings in Phase 1 of the application at the direction of Administrative Law Judge Anne Simon, as well as participation in other formal hearings and

conferences and settlement conferences. My goal in participating was to convince the Commission that the transfer of my address and the addresses of my neighbors in Baseline Region 16 from Region 17 was wrongful and that the transfer lowered our baseline allotments and together with tiered billing increased our electric bills tremendously. During the settlement conference, I pursued this point with the other parties and all of the active parties agreed to apply the Zone 17 baseline allowance to the limited number of customers including myself who reside in the City of San Bernardino but who were transferred to Zone 16. This was included in the settlement agreement that was attached as part of Decision 05-03-022.

Edison does not dispute the fact that Gildner, in accordance with §§ 1802(i) 1802(g), 1803(a), and 1804(b)(1), made a substantial contribution to Phase 2 with respect to the narrow issue of the reasonableness of an earlier transfer of a number of customers to Baseline Region 16 from Baseline Region 17. The rates in Baseline Region 16 are higher than the rates in Baseline Region 17. Gildner's recommendation to transfer the affected customers back to Baseline Region 17 was incorporated into the Phase 2 settlement agreement and approved by the Commission in D.05-03-022. Gildner's specific recommendation was adopted in D.05-03-022, and did not overlap with the recommendations of other parties.

B. Benefit to Ratepayers of Gildner's Participation

Quoting from Gildner's request:

Manfred F. Gildner contributed to the proceeding in a manner that was productive and resulted in benefits to ratepayers in comparison to the costs of participation. Absent my participation, the matter of transfer of myself and my neighbors from Zone 17 to Zone 16 and the ultimate correction back to Zone 17 would not have been incorporated in the Commission's decision resulting in

continued financial losses for the affected ratepayers. It is estimated that the cost of electricity rose at least \$50/month when the 336 ratepayers were transferred from Zone 17 to Zone 16. That is an annual increase of \$201,600 and we have been in Zone 16 for over three years. That means that for those three years we paid over \$604,800 in excess charges. This does not include the taxes and etc. that these ratepayers had to pay over the three years --- an additional 10% or \$60,480. So the total should be over \$665,280.

Although we cannot confirm Gildner's estimate of cost savings as a result of his participation, we are persuaded that the sums involved, for residential ratepayers affected by the change in zone, were substantial.

C. Reasonableness of Requested Compensation

On April 19, 2005, Gildner requested \$162,500 as compensation for his participation in Phase 2. Edison filed a response to deny the request or significantly reduce the amount of the request, because Gildner has not met the requirements for intervenor compensation. Edison states the request seeks unreasonable intervenor compensation for Gildner's very limited participation in Phase 2 and offers no accounting or documentation to support the compensation claim. Edison asks that the Commission (a) direct Gildner to provide a full accounting of costs incurred by him in connection with his participation in Phase 2, (b) direct Gildner to provide a breakdown of the 525 hours claimed in the request into actions taken, the dates when the actions were taken and the amount of time spent on each particular action, and (c) deny or revise the requested amount accordingly.

On May 31, 2005, Gildner replied to Edison's response and reduced his request to \$109,125.

Gildner allocated his time as follows:

Phase 1 – Gildner protested his transfer from Baseline Zone 17 (allowance 13.1 Kwh/d) to Baseline Zone 16 (allowance 9.2 Kwh/d) and filed C.02-06-018 to contest the transfer. After hearing his protest was denied and he was referred to the Edison GRC to pursue his claim. (D.02-11-007.)

Phase 2 – Appearance at a public participation hearing in the Edison GRC.

Phase 3 – On September 22, 2003 he filed a new complaint against Edison on the Baseline issue, which was rejected by the Docket Office with the recommendation to intervene in the Edison GRC.

Phase 4 – Gilner reports his time, thusly:

PHASE 4: I have filed the Motion to Intervene. The following is a list of time spent and category up to and including the Settlement Agreement.

1. Obtaining maps – 20 hours
2. Consultations with affected ratepayers – 40 hours
3. Phone conversations with Public Advisors and CPUC – 32 hours
4. Phone conversations (and e-mails) with SCE – 18 hours
5. Travel to and from San Francisco – 12 hours
6. Time spent in filing all motions, mailing, service lists, etc. – 30 hours
7. Appearances at pre-hearing, hearing, DRNAG (Del Rosa Neighborhood Action Group), etc. – 20 hours
8. Time spent in obtaining, writing and distributing pamphlets and booklets – 34 hours. Total – 204 hours.

ALLOCATION OF HOURS PER PHASE: This will be an estimate because in each Phase I obtained maps, went door to door, obtained signatures, phoned many people (especially Norm Carter at the Public Advisor's Office of the CPUC), and many other factors to obtain the truth about the illegal transfer of 336 consumers from Region 17 to Region 16. This illegal transfer is the only reason that I went thru many inconveniences to obtain an affirmative

settlement in Application 02-05-044 and
Investigation 02-06-022.

PHASE 1 – 75 hours

PHASE 2 – 50 hours

PHASE 3 – 25 hours

PHASE 4 – 204 hours

354 hours

Gildner's explanation of his requested compensation is, in its
entirety:

REQUEST FOR HOURLY FOR GILDNER'S SERVICES: I realize that I am not an expert at ratemaking but during the course of the last four years I became an expert in ratemaking. I know more about baseline, kWh, legislative rate reduction, trust transfer account, tiered billing etc. than many of the expert ratemakers. That is the main reason that I joined Application 02-05-004 and Investigation 02-06-002. Since I advocated for a group, I can therefore be classified as an Advocate. If I had hired an Advocate to represent me the Advocate would have charged me \$325/hour according to information provided to me by the Public Advisor. As a pseudo-Advocate I am charging \$300/hour.

COMPENSATION FOR OUT-OF-POCKET EXPENSES:

1. Air Fare from Ontario and Return (for pre-hearing and hearing) – \$350
 2. Parking, connecting transportation (for pre-hearing and hearing) - \$125
 3. Lodging and Meals (for pre-hearing and hearing) - \$350
 4. Booklets, pamphlets, copying - \$300
 5. Maintenance of printers and copy machines - \$200
 6. Maintenance of computer (crashed twice sending out Service List) - \$400
 7. New computer (maintenance of old computer did not work) - \$1100
 8. Miscellaneous supplies - \$100
- Total: \$2925

CONCLUSION: Request for compensation is:

354 hours @ \$300/hour = \$106,200
plus "out of pocket expense" = \$2925
\$109,125

Edison argues that Gildner's request is grossly deficient in that it (a) fails to provide a detailed description of services and expenditures incurred by him in connection with Phase 2, (b) requests an exorbitant hourly rate for Gildner's services without offering an explanation as to why the requested rate is justified or how it compares to the market rates paid to persons of comparable training, and (c) requests an excessive number of hours in light of his limited participation in Phase 2.

Section 1804(c) requires that requests for compensation include at a minimum a detailed description of services and expenditures. Section 1806 requires that "[t]he computation of compensation awarded pursuant to § 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services."

Gildner does not provide any specific dates, time spent, list of attendees or specific tasks accomplished at each of the formal hearings and conferences and settlement conferences he attended. Gildner makes no attempt to allocate the 204 hours he claims to have dedicated to Phase 2 (which he calls "Phase 4" in his request), making it impossible for us to surmise whether or not Gildner's work was efficient and reasonable. Gildner's request is seeking compensation for work performed in the years 2001-2003, which he calls Phases 1, 2, and

3, in his request, even though he is only eligible to receive compensation in connection with Phase 2. Gildner should not receive compensation for any work performed prior to July 20, 2004, the date of his notice of intervention.

As we previously stated:

“Our duty to ratepayers requires that awards ultimately paid by ratepayers are based on fees and costs demonstrated to be reasonable. Unlike most litigants, ratepayers generally have no direct control over the intervenors who purport to represent ratepayer interests and unlike most advocates, intervenors need not submit their litigation budgets for a client’s approval.”
(D.05-06-053 p. 10; D.05-06-054, p. 9.)

Here, we find the requested amount to be excessive in relation to the relatively informal settlement process involved in this rate case Phase 2. In the absence of an analysis of work performed or number of settlement conferences attended, we will exercise our judgment by reducing the number of requested hours to 50.¹

Gildner’s request to be compensated at \$300 per hour has not been justified. In D.05-07-020 in this proceeding, we awarded TURN’s experts a total of \$30,426 for participating in all areas and all issues of Phase 2; an average of about \$163/hr. We cannot award more to a non-expert participating in one area of Phase 2. When compared to other intervenor awards for persons with vastly more experience we

¹ D.05-07-020 found that TURN’s experts spent over 186 hours on all issues in Phase 2 of this GRC. (D.05-07-020, p. 12.)

have no basis to compensate Gildner at the level requested. In one recent award in Rulemaking (R.) 01-10-001, we compensated an intervenor with long experience in Commission proceedings at \$110 per hour. (D.05-06-053, pp 8-9.) That intervenor was an expert witness in electrical wires and facilities, the subject of R.01-10-001. Gildner is not an expert in rate design allocation. We will compensate him at the rate of \$110 per hour and for 50 hours of work we will award \$5,500.

D. Other Reasonable Costs

Gildner asks for \$2,925 for out-of-pocket expenses:

Air	\$350
Parking	125
Lodging & Meals	350
Copying	300
Maintenance of Copying Machine	600
New Computer	1,100
Misc.	100

We do not consider maintenance of copy machine or the purchase of a new computer to be compensable items. We will find the reasonable costs of Gildner's participation to be:

Air Fare	350
Parking	125
Lodging and Meals	350
Copying	300
Misc.	<u>100</u>
TOTAL:	\$1,225

The photocopying, postage, and delivery costs relate to the preparation and distribution of documents necessary for Gildner's contribution are reasonable, were necessarily incurred to enable him to participate in this proceeding, and will be compensated.

III. Award

We award Gildner \$6,725. This calculation is based on the hourly rates and business expenses described above. We find those rates and expenses reasonable.

This proceeding is a general rate case specific to Edison, and therefore it is responsible for award payment. Consistent with previous Commission decisions, we will order that, after July 3, 2005 (the 75th day after Gildner filed his compensation request), interest be paid on his award at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15. Interest will continue on this award until full payment is made.

We remind Gildner that, like all intervenors, Commission staff may audit his records related to this award and that intervenors must make and retain adequate accounting and all other documentation to support all claims for intervenor compensation.

IV. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

V. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. Gildner made a substantial contribution to D.05-03-022 as described herein.
2. Gildner's requested hourly rates are not reasonable when compared to the market rates for persons with similar training and experience.
3. The reasonable compensation for Gildner's participation is \$110/hr for 50 hours.

4. Related business expenses of \$1,225 are reasonable.
5. The total of the reasonable compensation is \$6,725.
6. The attached appendix summarizes today's award.

Conclusions of Law

1. Gildner has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for his claimed compensation incurred in making substantial contributions to D.05-03-022.

2. Gildner should be awarded \$7,055 for his contribution to D.05-03-022.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Gildner may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Manfred F. Gildner is awarded \$6,725 as compensation for his substantial contributions to Decision 05-03-022.

2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay Gildner the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 3, 2005, the 75th day after Gildner filed his request for compensation, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?
Contribution Decision(s):	D0503022	
Proceeding(s):	A0205004, I0206002	
Author:	ALJ Barnett	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Manfred F. Gildner	4/19/05	\$109,125	\$6,725	No	Excessive hourly rate and total hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Manfred	Gildner	Expert	Manfred Gildner	\$300	2004-05	\$110